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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 1000

STALEY MILLING COMPANY,
Petitioner,

vs.

A. E. STALEY MANUFACTURING COMPANY,
Respondent.

BRIEF FOR RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The instant case is a typical case of trademark infringement and unfair competition, depending for decision entirely on its own facts, and since two courts below have unanimously resolved the disputed questions of fact in favor of respondent, the writ of certiorari should not be granted.

Petitioner argues the supposed merits of its case as though the writ had already been granted, but in reality no ground for allowance of the writ has been shown.

I. The first four of the six questions which petitioner says are presented to this court are each based upon assump-

tions of fact contrary to the findings of both of the lower courts. The fifth question "presented" contains the false statement that the District Court made "no findings of fact with respect to the conduct of respondent bearing on the defense of estoppel, acquiescence and laches." The sixth question ignores material facts and is therefore misleading.

II. The case is only an ordinary trademark and unfair competition action involving entirely a question of fact and since there were concurrent findings of fact by the two courts below, the case should not be reviewed.

III. There are no important or special reasons for granting the writ.

IV. This case does not involve either the validity or the construction of the Lanham Act.

V. There is no conflict between the decision in this case and decisions of other courts requiring resolution.

VI. The petition is not documented, and it contains many gross misstatements of fact.

REASONS WHY THE WRIT SHOULD BE DENIED.

I. The first four of the six questions which petitioner says are presented to this court are each based upon assumptions of fact contrary to the findings of both of the lower courts. The fifth question "presented" contains the false statement that the District Court made "no findings of fact with respect to the conduct of respondent bearing on the defense of estoppel, acquiescence and laches." The sixth question ignores material facts and is therefore misleading.

(1) By the first question "presented" in its petition (p. 2), petitioner asks whether the Lanham Act (Trademark Act of 1946, 60 Stat. L. 427, 15 U. S. C. 1051 *et seq.*) may be given "*ex post facto* effect" and be made the basis of destroying trademark rights previously acquired. The question assumes that petitioner had acquired rights in the trademark STALEY'S more than 20 years prior to the Act. Whether petitioner had acquired rights in this trademark was obviously a question of fact to be determined by the trier of facts, and the trier of facts determined the question contrary to the assumption. For this reason alone, question number 1 is not a question presented to this court.

Since petitioner had not previously acquired rights in this trademark, the Lanham Act was not made the basis for destroying petitioner's claimed trademark rights "*ex post facto*" or otherwise. Petitioner acquired no rights in STALEY'S as a trademark because it did not build any rights of its own. It was encroaching on the rights of respondent. The trial court characterized petitioner's conduct as progressive encroachment. Petitioner complains (Petition p. 19) that neither of the lower courts explains "what conduct is deemed to have constituted such 'progressive en-

croachment.'" On the contrary, what the courts below meant by "progressive encroachment" clearly appears from the findings.[1]

Respondent began the manufacture, advertising and sale of foods and feeds under its trademark STALEY'S in 1912 and has done so continuously since that date (F. 10). Its bags and containers have always borne this trademark or had tags attached bearing this trademark (F. 11). The feed bags have borne a target or disk design since 1912 (F. 13), and all containers had a paraph or tail on the Y in STALEY'S since 1921 (F. 12). Respondent's use of the trademark STALEY'S was long prior to petitioner's (F. 16) and was on a national scale when petitioner first began doing business (F. 17). Respondent has 15 registrations of its trademark (F. 18) and 17 registrations of trademarks which include the syllable "Sta" (F. 19). The trademark STALEY'S has identified and has been distinctive of respondent's products since 1912 (F. 30). Respondent has created a widespread secondary meaning for STALEY'S (F. 31) and has built up a valuable good will in this trademark (F. 34). Respondent has long been known and commonly referred to as STALEY or STALEY'S (F. 33).

It was in this climate that petitioner began its progressive encroachment upon respondent's use of and rights in respondent's trademark (F. 41). Petitioner was small in the early years (F. 46), and even in later years its sales were concentrated largely in Kansas and Missouri (F. 47). It was to be expected that petitioner's activities would not come to the attention of respondent. Petitioner's first

1. As an appendix to this brief are the Findings of Fact and Conclusions of Law. The Findings are numbered as in the trial court, with many of the record references supporting them. We refer herein to these Findings by number. Since the Appendix contains the record references, we do not here duplicate the record references supporting the cited Findings.

trademark was FOUR BELLS (F. 22). Petitioner's "Open for Business" advertisement announced that it was offering for sale:

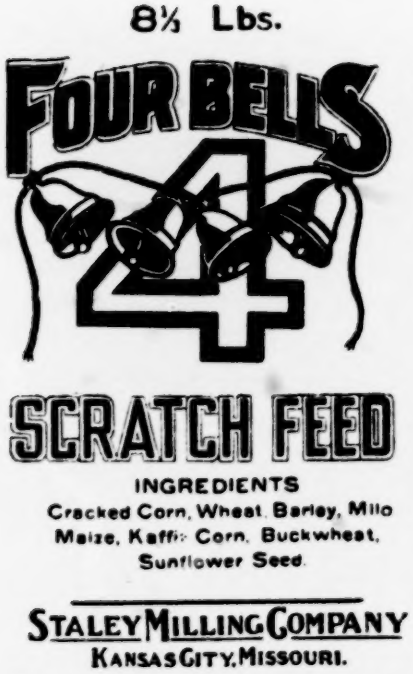
FOUR BELLS CREAM MEAL
FOUR BELLS FLOUR
FOUR BELLS CORN CHOP
FOUR BELLS DAIRY FEED
FOUR BELLS POULTRY FEEDS

(Plf. Ex. 98a; R. 1913; Plfs. Bk. Ex. 24.)[1]

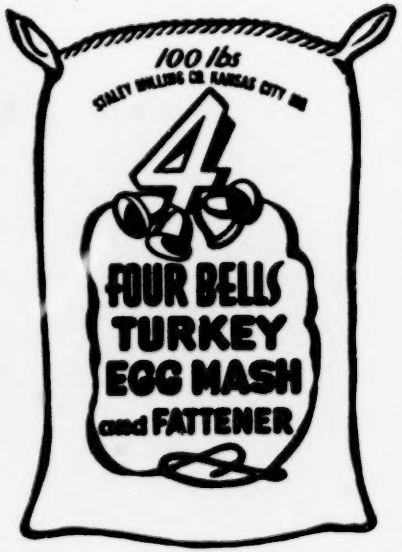
At least as early as 1934 petitioner knew of respondent's use of STALEY'S as a trademark (F. 42) when petitioner began buying respondent's feeds in bags bearing this trademark (F. 43). Having this knowledge, petitioner began a deliberate campaign gradually to encroach upon respondent's trademark. Finding 37 clearly outlines the most obvious steps, each step bringing petitioner's use closer and closer to respondent's trademark. This was one of the trial court's findings which was quoted verbatim by the Court of Appeals with approval (Petition p. 21a).

Petitioner's progressive encroachment is graphically portrayed by the illustrations of petitioner's containers shown on the next page. A comparison of petitioner's and respondent's containers may be made by examining illustrations of respondent's containers shown at pages 11 to 15 of the printed record.

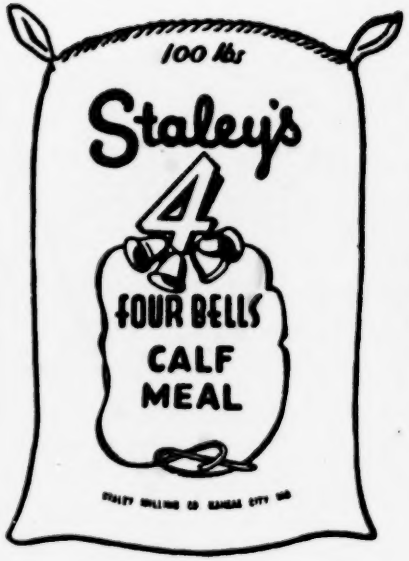
1. The references to Plfs. Bk. Ex. are to the book of exhibits filed by respondent in the Court of Appeals and filed with the



Petitioner's original container using Four Bells as its trademark.

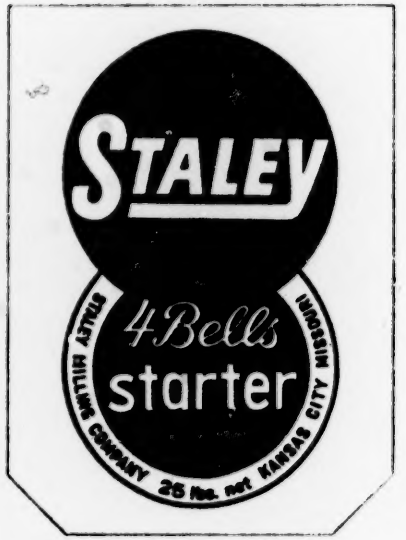


Petitioner's first step toward displaying **STALEY** on its containers as a trademark.



Petitioner's second step in displaying **STALEY'S** on its containers as a trademark.

Petitioner's third step in displaying **STALEY'S** on its containers as a trademark.



Petitioner's fourth step in displaying **STALEY** on its containers as a trademark.

It should be noted that petitioner did not use STALEY as a trademark at the outset. We discuss the question of the right to use a surname as trademark at page 28, but we point out here that had petitioner intended to take advantage of the claimed reputation and good will of J. H. Staley, one of its incorporators, it would have used STALEY and not FOUR BELLS as its trademark when it first began business.

In the face of the findings of both courts below and the voluminous evidence supporting them, petitioner's assumption that petitioner had acquired rights in the trademark STALEY's at the time the Lanham Act was enacted is completely fallacious. Petitioner's conduct was unlawful and it did not acquire rights in this trademark as a result of its unlawful conduct.

Mishawaka Mfg. Co. v. *Kresge Co.*, 1942, 316 U. S. 203, 205.

Stahly, Inc. v. *M. H. Jacobs Co.*, 7 Cir. 1950, 183 F. 2d 914.

Federal Trade Commission v. *Real Products Corp.*, 2 Cir. 1937, 90 F. 2d 617.

Cook Chemical Co. v. *Cook Paint & V. Co.*, 8 Cir. 1950, 185 F. 2d 365.

It is clear that the Lanham Act was not given "*ex post facto* effect" by the courts below to destroy trademark rights of petitioner. That Act was but a codification of the common law. *S. C. Johnson & Son, Inc.* v. *Johnson et al.*, 2 Cir. 1949, 175 F. 2d 176, cert. den. 338 U. S. 860. At page 179 the court said:

> "It is quite enough to explain the change of diction in the Lanham Act that Congress wished to do no more than clear up this doubt—if indeed it was not more than a doubt—and make the protection of the new right coextensive with the law of unfair competition as it was in 1946, just as the Act of 1905 had made it coextensive with the law of 1905."

Section 49 of the Lanham Act (15 U. S. C. 1051 note) expressly provides that nothing in the Act "shall adversely affect the rights or the enforcement of the rights in marks acquired in good faith prior to the effective date of this Act."

Petitioner's contention that the courts below gave a retroactive effect to the Lanham Act is based upon petitioner's contention that it had acquired rights in a trademark before the Lanham Act was enacted—a contention of fact which both of the courts below rejected. Petitioner was not defeated below either by a misconstruction of the Lanham Act or by a misapplication of the Act, but was defeated by its failure to establish the rights claimed to have been in existence at the time the Lanham Act became effective. The courts below held that petitioner had not established any rights in the mark, and that since petitioner was the latecomer, respondent was not estopped to enjoin petitioner's unlawful conduct.

To summarize, question number 1 assumes that petitioner had rights in the trademark STALEY'S before the passage of the Lanham Act. Since both courts below found that petitioner had not at any time built up or acquired rights in the trademark STALEY'S, the question is hypothetical and moot and does not need to be answered by this court.

(2) The second question which petitioner says is presented (Petition p. 2) assumes that respondent "by positive acts * * * had indicated acquiescence in petitioner's use" of the trademark. This, of course, was a question of fact, and the District Court found, contrary to petitioner's contention, that respondent had not acquiesced.

As we have already pointed out, the courts below found that petitioner originally sold its feeds under the trademark FOUR BELLS, but by a gradual process in making

changes on its containers came to use the trademark STALEY's in a fashion very similar to respondent's use. Respondent did not know of or acquiesce in these changes (F. 38). The courts also found that respondent's relationship with petitioner for several years was not sufficient to charge respondent with notice of petitioner's use of STALEY's as a trademark (F. 50, 51); that respondent's first knowledge of the wide extent of petitioner's use of STALEY's as a trademark was in 1949, at which time respondent objected to said use (F. 45); that respondent never consented to petitioner's use of its trademark (F. 54); that petitioner, in adopting and using the trademark, did not rely on any act or omission of respondent (F. 55); and concluded that respondent was not barred from injunctive relief by reason of laches, acquiescence or estoppel (Conclusion 23, R. 3675). Not only did respondent not acquiesce in petitioner's use of the trademark, respondent had no knowledge of its use. Obviously, there can be no acquiescence without knowledge.

Even had petitioner been able to prove knowledge on the part of respondent, it has been the rule of this court since *McLean* v. *Fleming*, 1878, 96 U. S. 245, that while laches may defeat the right to damages and an accounting in a trademark case, it will not preclude injunctive relief. The rule was applied in *Menendez* v. *Holt*, 1888, 128 U. S. 514, 523; *Independent Nail and Pack. Co.* v. *Stronghold Screw Products*, 7 Cir. 1953, 205 F. 2d 921; *Owen W. Thum Co.* v. *Dickinson*, 6 Cir. 1917, 245 Fed. 609, 623, and *Brooks Bros.* v. *Brooks Clothing of California*, S. D. Calif. 1945, 60 F. Supp. 442, 458, aff'd 9 Cir. 1947, 158 F. 2d 798.

In the purported statement of facts in its petition (p. 8), petitioner states that respondent's salesmen knew of petitioner's use of STALEY's as a trademark "and two of them so testified". It will be noted that the petition does not contain the names of the salesmen or references to the

record where their testimony may be found. In fact, the petition does not contain record references in support of the many alleged facts which petitioner claims the evidence established. In the present instance, we cannot locate the testimony of two salesmen. We submit that with respect to the one salesman whose testimony has been located, it is very significant that the witness was not asked and did not testify the date on which he saw petitioner's advertisements and it is significant that the uncontradicted evidence is that he did not report the information to respondent's management (R. 3024). It is also significant that the petition fails to mention that respondent's manager, Herschel T. Morris, referred to on page 8 of the petition, testified that he did not know until shortly before suit was filed in 1951 that petitioner was using respondent's trademark (R. 3175-77).

The purport of petitioner's second question is, was respondent entitled to an injunction when respondent had knowledge of petitioner's use and in fact had acquiesced in its use? Since the assumption of knowledge and acquiescence fails because the trier of the facts found the evidence was to the contrary, there is nothing left of the question which is available to petitioner in this court.

(3) The third question presented by petitioner in its petition (p. 3) begins "Where, under these circumstances". Presumably the circumstances referred to are those assumed in questions 1 and 2, and, for the reasons already discussed, it is clear that question 3 assumes circumstances contrary to the evidence. It therefore presents no question for the consideration of this court.

(4) Question 4 which petitioner says (p. 3) is presented by its petition assumes respondent's acquiescence and petitioner's "valuable rights in the trademark". We have already shown that these two assumptions are contrary to the concurrent findings of the two courts below. By

this question, petitioner asks, should the possibility of confusion which has always existed be made the ground for an injunction? Both courts below found actual confusion, not a possibility of confusion. Farmers and feeders have bought petitioner's feeds believing them to be respondent's (F. 87). Dealers have handled petitioner's feeds believing them to be respondent's feeds (F. 88). Both courts below found (F. 86) that petitioner's use of the trademark STALEY's has caused confusion and mistake and has deceived purchasers as to the source of origin. In the Appendix hereto will be found numerous record references supporting this finding. It is true that respondent was not aware of this confusion before 1949 when it first learned of petitioner's use of the trademark and started an investigation (F. 45). While it was difficult to find persons who could remember incidents that happened in prior years, respondent was able to introduce evidence of confusion which occurred prior to 1949 (R. 887-889, 933-936, 1684-85. 1851, 1500, 814, 838, 842, 909, 944, 1265). In commenting upon the evidence of confusion, the Court of Appeals said (Petition, pp. 33a-34a):

> "To maintain its burden of proof on the issue of confusion or likelihood of confusion plaintiff and defendant offered testimony of numerous purchasers and prospective purchasers. Indeed this class of evidence accounts for the bulk of the record. The short of all this is that defendant contends its consumer witnesses outweigh those of plaintiff, in quality and quantity. Yet elementary as it is we again point out that weight and credibility are matters for the district judge trying a case without a jury. Even though some of the evidence was introduced through depositions we found nothing in them impelling a different view of the facts than the one taken below. *Square D-Company* v. *Sorenson,* 224 F. 2d 61 (7th Cir. 1955).
>
> "Our own observations of the numerous sacks, signs and bags brought here as exhibits, verified the district judge's conclusions on the issue of 'confusion.' Only

> the most discerning, discriminating and determined customer, among brand conscious consumers, could avert mistaking Missouri Staley for Illinois Staley among the products involved."

(5) In question 5 of the questions which petitioner says are presented, petitioner states (p. 3) that the District Court made no findings of fact on the defense of estoppel, acquiescence and laches, and then asks if Rule 52 of the Rules of Civil Procedure was complied with. This Court said in *Kelley* v. *Everglade Drainage District*, 1943, 319 U. S. 415, 422:

> "Nor do we intimate that findings must be made on all of the enumerated matters or need be made on no others; the nature of the evidentiary findings sufficient and appropriate to support the court's decision as to fairness or unfairness is for the trial court to determine in the first instance in the light of the circumstances of the particular case. We hold only that there must be findings, stated either in the court's opinion or separately, which are sufficient to indicate the factual basis for the ultimate conclusion."

The court said in *Trentman* v. *City and County of Denver, Colo.*, 10 Cir., 1956, 236 F. 2d 951, 953:

> "The rule does not require the making of elaborate findings of fact extending into minute and unnecessary detail in respect to every feature or phase of the case. The exaction of the rule is met in full measure if the findings of fact cover in clear, definite and concise language the contested issue or issues in the case. *Life Savers Corp.* v. *Curtis Candy Co.*, 7 Cir. 182 F. 2d 4."

and to the same effect is *Norwich Union Indemnity Co.* v. *Haas*, 7 Cir. 1950, 179 F. 2d 827, 832.

There were adequate findings on the defenses of estoppel, acquiescence and laches raised by petitioner. Finding 38 was, "It does not appear that plaintiff knew of or

acquiesced in any of these changes" (in petitioner's trademark). Finding 45 was that respondent's first knowledge was in 1949. Finding 50 was that respondent's relationship with petitioner was not sufficient to charge respondent with notice of petitioner's use. Finding 51 was that respondent's sales to petitioner did not charge respondent with notice. Finding 54 was that respondent never consented to petitioner's use of the trademark. Finding 55 was that petitioner did not rely on any act or omission of respondent.

Petitioner also states in question number 5 that "the decision of the Court of Appeals adopts the ruling of the District Court without any showing as to the premises of fact on which it may have been based." In its opinion, the Court of Appeals said (Petition, pp. 14a-15a):

> "A factual controversy is the chief factor in this appeal resting upon a prolix record. After carefully canvassing that five volume transcript of evidence containing roughly 3693 printed pages encompassing testimony of 122 witnesses, 192 depositions and a welter of exhibits, it is our opinion that the findings of fact, vigorously assailed by defendant, and entered below, must be left undisturbed."

After quoting from *Benrose Fabrics Corp.* v. *Rosenstein*, 7 Cir. 1950, 183 F. 2d 355, 358, and *Norwich Union Indemnity Co.* v. *Haas*, 7 Cir. 1950, 179 F. 2d 827, 832, and referring to *Trentman* v. *City and County of Denver, Colo.*, 10 Cir. 1956, 236 F. 2d 951, 953, the Court of Appeals further said (Petition, p. 16a):

> "We hold that the findings before us in this appeal sufficiently disclose the factual basis for the trial judge's ultimate conclusions. The record contains substantial support for those findings of fact."

In the light of these declarations of the Court of Appeals that it carefully canvassed the evidence and found that the

findings were supported by evidence, petitioner's statement (p. 3) that "the decision of the Court of Appeals adopts the decision of the District Court without any showing as to the premises of fact on which it may have been based" is completely unsupportable.

(6) The sixth question which petitioner says (Petition, pp. 3-4) is presented to this Court is whether under the Lanham Act respondent's registration of the trademark STALEY'S for edible starches and for soybean oil meal as an ingredient for food and as a cattle feed under the Act of 1920 may be given the same effect as a registration upon the principal register [under the Lanham Act] and be accepted as evidence of respondent's exclusive right to use that trademark on animal feeds. This question assumes, contrary to the evidence and to the findings of the courts below, that that registration was the sole basis of respondent's right to use the trademark STALEY'S on animal feeds. It entirely ignores respondent's use of the trademark on its animal feeds since 1912 (F. 10, 24), and ignores respondent's common law rights in the trademark thus built up entirely independently of any registration. There is ample support for the decisions of the courts below without reliance on any formal registration of respondent's trademark either on foods or animal feeds. Petitioner's question number 6 thus is based upon only a fragment of the issues and the evidence in the instant case and therefore need not be answered by this Court.

It was not the Lanham Act which conferred exclusive rights in the trademark on respondent, nor was the Lanham Act availed of as a basis for such rights. Respondent built up exclusive rights long before the Lanham Act was enacted, and that Act merely gave respondent certain procedural remedies for enforcing those rights.

The remedy for unfair competition which respondent invoked is a development of the common law and would have

been available to respondent even if its trademark had not been registered. The 1920 Act expressly preserves all of the legal and equitable remedies available to an aggrieved trademark owner under the Act of 1905. As Mr. Justice Reed said in *Armstrong Paint & V. Works* v. *Nu-Enamel Corp.*, 1938, 305 U. S. 315 at page 334:

> "The owner * * * is not limited in any way by the Act, as Section 23 of the Act of 1905 is made specifically applicable. This section preserves the legal and equitable remedies to an aggrieved owner. * * * The registrant acquires by the acceptance of his mark under the 1920 Act the right to proceed in the Federal courts against infringers and to recover triple damages if he can establish his ownership of the trademark at common law."

And the Lanham Act, as we have previously pointed out, expressly preserves all rights acquired prior to its enactment, just as the 1920 Act did.

From a reading of the entire opinion of the Court of Appeals, no fair-minded person could say that the court held that respondent's rights enforced in this case were based upon the elaborate interpretation of the Lanham Act which the petitioner argues (Petition, pp. 29-31) may be found in the opinion of the Court of Appeals. Actually, the Court of Appeals made no such pronouncement with respect to the Lanham Act as is pretended to be seen by the petitioner in its argument. When the Court of Appeals said (Petition, p. 29a) that respondent grounded its amended complaint on the Lanham Act, obviously it was saying that respondent was seeking to enforce the rights preserved to it by that Act.

The foregoing analysis of the six questions which petitioner says are presented to this Court clearly demonstrates that petitioner has really presented no question fairly meriting consideration by this Court.

II. The case is only an ordinary trademark and unfair competition action involving entirely a question of fact and since there were concurrent findings of fact by the two courts below, the case should not be reviewed.

This was a suit between two corporate traders involving trademark infringement and unfair competition. The essence of trademark infringement and unfair competition is false representation, however made, that the goods of the party complained against are the goods of the party complaining. As this Court said many years ago in *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict*, 198 U. S. 118, 137 (quoting Lord Justice Turner):

> "'It is a question of evidence in each case whether there is false representation or not.'"

Lord Halbury said in *The Cellular Clothing Co.* v. *Maxton and Murray*, 16 R. P. C. 397, 404:

> "It [trademark infringement] being a question of fact, no previous case can be an authority for any other case, each case must depend upon the facts applicable to that case alone."

In a case such as this involving a question of fact in which there are concurrent findings of fact by the two courts below, the case should not be reviewed. The Court of Appeals set forth at length in its opinion practically all of the District Court's findings of fact, and determined that they were supported by substantial evidence, stating (Petition, p. 15a):

> "Defendant's minute dissection of various findings of fact in the hope of exhibiting deficiencies which would persuade us that the judgment below was the result of the trial judge's unwarranted and unsound diagnosis of the evidence is unavailing when measured by the record and Rule 52, * * *."

The language of this Court in *Graver Tank and Mfg. Co.* v. *Linde Air Products Co.*, 1949, 336 U. S. 271, 275, is particularly applicable:

> "The rule [Rule 52(a)] requires that an appellate court make allowance for the advantages possessed by the trial court in appraising the significance of conflicting testimony and reverse only 'clearly erroneous' findings. These are manifestly supported by substantial evidence and the Court of Appeals found them supported by the weight of the evidence—indeed found the evidence to warrant support of the patent even in matters not found by the trial court. A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error. [Citations.]"

III. There are no important or special reasons for granting the writ.

Only the rights of the immediate parties are involved in this case except, as the trial court said, for "the right of the public not to be confronted on all sides with confusion or the likelihood thereof" (Petition, p. 12a). There was no evidence of third party usage of the trademark STALEY's (F. 98). The case did not involve the right of a private individual to use his own name in his own business, a subject which we discuss below (p. 28). It did not involve the validity of any of respondent's 15 registrations of its trademark STALEY's the first of which was obtained four years before petitioner was organized (F. 18), and the validity of none of which was attacked by petitioner.

Petitioner asserts (Petition, p. 31) that if this decision stands it will enable registrants under the 1920 Act to challenge "their competitors' heretofore lawful use of

descriptive and geographic marks and surnames." This decision will not adversely affect the defenses which were available to any trademark owner prior to the Lanham Act because those rights are expressly preserved by the Act and nothing in the decision below endangers those rights. It will always be a question of fact in every case whether one had really acquired any rights. One may, if his rights are attacked, interpose any equitable or legal defense he considers appropriate.

IV. This case does not involve either the validity or the construction of the Lanham Act.

Respondent alleged in its complaint that it had registered its mark in the United States Patent Office for various products derived from corn and soybeans, and by paragraph 15 of its complaint alleged that "the use by the defendant of the name STALEY and the target or disk design as trademarks for its products constitutes a colorable imitation and infringement of plaintiff's common law and federally registered trademarks" (R. 6). This, petitioner denied and that was the simple issue tried below. Respondent received no relief below that it was not entitled to under the common law. Respondent's long and extensive use of STALEY's as its trademark for foods and feeds established it as a valid trademark under the common law. *United States* v. *Steffens* (Trademark Cases) 1879, 100 U. S. 82. It is fundamental that trademark rights are founded upon prior adoption and use, and do not depend upon registration. Registration merely records rights previously built up. *Griesedieck Western Brewing Co.* v. *People Brewing Co.*, 8 Cir. 1945, 149 F. 2d 1019; *Dixi-Cola Laboratories* v. *Coca-Cola Co.*, 4 Cir. 1941, 117 F. 2d 352 (cert. den. 314 U. S. 629). While due effect must be given to the fact that a trademark is federally registered, the result of such registration is procedural, not substantive.

Pennzoil Co. v. *Crown Central Petroleum Corp.*, D. Md. 1943, 50 F. Supp. 891, aff'd 4 Cir. 1944, 140 F. 2d 387 (cert. den. 322 U. S. 750).

The Lanham Act provides by Section 32 certain remedies for an aggrieved registered trademark owner expressly preserving, however, by Section 49, an opposing party's equitable and legal defenses. Section 32(1) of that Act provides that:

> "Any person who shall in commerce (a) use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of any registered trademark in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake as to the source of origin of such goods or services • • • shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided • • •."

By Section 49 it is provided that:

> "Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act."

Petitioner says (Petition p. 14) that the court below construed the Lanham Act so as to deprive it of the defense of laches and estoppel. In "rejecting petitioner's defenses of laches, acquiescence and estoppel" the court failed, petitioner contends (p. 15), to give effect to the provisions of the Act which preserve petitioner's legal and equitable defenses. The court below did not reject petitioner's equitable defenses in the sense of holding that these defenses were not available to petitioner. It rejected these defenses because petitioner did not sustain the burden resting upon it of proving these defenses.

When the Court of Appeals stated (Petition p. 28a) that:

> "Defendant's reasoning runs afoul of the Lanham

> Act and the theories discussed in cases such as *Pure Foods* v. *Minute Maid Corp.*, 214 F. 2d 792, 796 (5th Cir. 1954) • • •."

the court was referring to a common law development, the *Aunt Jemima* doctrine [*Aunt Jemima Mills Co.* v. *Rigney & Co.*, 2 Cir. 1917, 247 Fed. 407, cert. den. 245 U. S. 672] dating back to 1917 under the 1905 Act and was not in any sense interpreting the Lanham Act as being a new, decisive bar to the claim of petitioner that its use of the trademark could not be enjoined by the earlier user of the mark.

That this meaning was intended by the Court of Appeals is corroborated by its discussion (Petition pp. 28a-29a) of the relationship of petitioner's products to those of respondent, ending with the quotation from the trial judge's memorandum on this question (Petition p. 29a):

> "The conclusion I have reached on this question is that the 'separate fields' theory is too tenuous a one to be adopted by the court."

The Court of Appeals did not adopt some retroactive rule it found in the Lanham Act, but approved the decision of the trial judge arrived at on the soundest possible common law grounds.

No claim was made in the trial court by petitioner, nor did it contend in the Court of Appeals, that it had not been afforded full opportunity to establish the defense of estoppel. Petitioner's contention in both courts was that it had proved estoppel. Both courts found otherwise (F. 38, 45, 50, 51, 54, 55).

V. There is no conflict between the decision in this case and decisions of other courts requiring resolution.

Petitioner contends (Petition p. 15) that the decision in the instant case is in conflict with the decisions of this Court in *Ancient Egyptian Order* v. *Michaux*, 279 U. S. 737; *Creswill* v. *Knights of Pythias*, 275 U. S. 246; *French Republic* v. *Saratoga Vichy Co.*, 191 U. S. 427; and *Salehner* v. *Eisner*, 179 U. S. 19. At page 17, petitioner contends that the decisions in this case are also in conflict with the decisions in other circuits in *Dietz* v. *Horton Mfg. Co.*, 6 Cir. 1909, 170 Fed. 865, 872; *C. B. Fleet Co.* v. *Mobile Drug Co.*, 5 Cir. 1922, 284 Fed. 813, 815; *Ambrosia Chocolate Co.* v. *Ambrosia Cake Bakery*, 4 Cir. 1947, 165 F. 2d 693, 695; *Anheuser-Busch* v. *DuBois Brewing Co.*, 3 Cir. 1949, 175 F. 2d 370, 377; *Emerson Electric Mfg. Co.* v. *Emerson Radio & P. Corp.*, 2 Cir. 1939, 105 F. 2d 908. These cases were all decided on their special facts, and there is no conflict whatever in principle.

Thus, in the *Michaux* case, 279 U. S. 737, this court held that a fraternal order was barred by laches from seeking relief against the use of a similar name, emblems, regalia, etc., by an imitative order where, knowing of such use, the plaintiff acquiesced for a period of 30 years.

In *Creswill* v. *Knights of Pythias*, 275 U. S. 246, this court said that the facts concerning "the establishment of the order, its lodgment in Georgia, its vast expansion, its years of duration, and its volume of transactions, were not disputed in any particular whatever, and therefore leave no room for any other but the legal conclusion of laches."

In *French Republic* v. *Saratoga Vichy Co.*, 191 U. S. 427, the labels of the parties were not the same, and this court held that equity would not enforce a right to an exclusive use of the word VICHY in connection with mineral waters, which word by long adverse use had become generic, where

it was shown that no attempt whatever was made to simulate the labels and where the two waters involved were different.

The *Saxlehner* case, 179 U. S. 19, was also decided on its special facts. That case merely held that the right to a trademark, once lost by permitting infringers in this country to use it until the word became generic, is not regained by change of the law of the country of its origin, by which change the owner's right to it is established in that country after it was held to be public property for many years.

Dietz v. *Horton Mfg. Co.*, 6 Cir. 1909, 170 Fed. 865, went off on the special ground that the owner of the trademark had permitted other manufacturers to use it for a number of years without objection, and had allowed it to become common property.

C. B. Fleet Co. v. *Mobile Drug Co.*, 5 Cir. 1922, 284 Fed. 813, was decided on the ground that PHOSPHO, the trademark involved, had been registered by the defendant's predecessor 14 years before the plaintiff registered its trademark; that the plaintiff made no objection and offered no reason why it did not object. Furthermore, there was no evidence of confusion, and also the word PHOSPHO was held to be purely descriptive "denoting combining forms of phosphorus", which word the court said the defendant had as much right to use as the plaintiff.

In *Ambrosia Chocolate Co.* v. *Ambrosia Cake Bakery*, 4 Cir. 1947, 165 F. 2d 693, the court pointed out, page 694, that "*More than 8 years before suit was filed*, a representative of plaintiff called on defendant's president and tried to sell to defendant's president certain of plaintiff's materials which were *to be used in making Ambrosia Cakes to be sold under that name.*" Shortly thereafter, plaintiff wrote defendant's president and "expressed regret that some of plaintiff's materials used by defendant in making Ambrosia Cakes had not proved satisfactory and indicated

a desire to sell more of plaintiff's materials, again *to be used in making Ambrosia Cakes* to be marketed under that name." (Court's emphasis.)

In *Anheuser-Busch* v. *DuBois Brewing Co.*, 3 Cir. 1949, 175 F. 2d 370, plaintiff brought suit against defendant in 1909 to restrain infringement of its trademark BUDWEISER on beer, but dismissed the suit and did nothing further until 1940 when it sued a second time. Moreover, plaintiff's predecessor had declared in a public meeting that it did not have exclusive right to the word BUDWEISER. The court held that plaintiff was estopped.

In the *Gold Medal* case [*France Milling Co.* v. *Washburn-Crosby Co.*, 2 Cir. 1939, 7 F. 2d 304], cited on page 17 of the petition, the court pointed out that Washburn knew for ten years that France Milling was using Washburn's trademark and did nothing about it. Moreover, Washburn had for a long time sold France Milling flour pursuant to correspondence "prominently announcing France's trademark and the character of its products." Furthermore, there was no confusion, and the court held that because of the commonplace character of the trademark in question (GOLD MEDAL) the plaintiff was entitled to only narrow protection.

The above cases were decided on the basis of early knowledge of the infringing use. They are therefore not in conflict with but are clearly distinguishable from the instant case because the District Court found as a fact that respondent did not have early knowledge (F. 38, 45).

The distinction between the instant case and *Emerson Electric Co.* v. *Emerson Radio & Phonograph Corp.*, 2 Cir. 1939, 105 F. 2d 908, cited by petitioner as being in conflict, lies in the wide dissimilarity between the goods involved in that case. Plaintiff and defendant both used the trademark EMERSON, but neither manufactured radios until 1923

when defendant commenced manufacturing radios and built up an immense business. The court held that plaintiff could not maintain an unfair competition suit in 1936 in view of the fact that plaintiff at no time had taken any affirmative action indicating an intention to manufacture radios or to use the name EMERSON on radios, and defendant had no notice before it built up its radio business that plaintiff claimed exclusive right to the name. In the instant case, as we have pointed out, petitioner had early knowledge of respondent's rights in the trademark STALEY'S (F. 42).

Petitioner next contends (Petition pp. 23-28) that the Court of Appeals in sustaining an injunction against the trademark use of a family name is in conflict with the decisions of this court in *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540; *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict*, 198 U. S. 118; and *William R. Warner & Co.* v. *Eli Lilly & Co.*, 1924, 265 U. S. 526. There is no real conflict in the basic holdings of these cases.

Brown Chemical Co. v. *Meyer*, 139 U. S. 540, does not stand for the general proposition that courts will not interfere with the use of one's own name as a trademark. That case, when stripped of *obiter dicta*, simply holds that courts will not interfere with the use of one's own name where no confusion and no public deception have resulted from such use. In that case, there was a finding of *no confusion*. That fact alone distinguishes that case from this case. This court, in the *Brown Chemical* case, carefully distinguished between the lawful and the unlawful use of a family name. As illustrative of an unlawful use, the court cited *Croft* v. *Day*, 7 Beav. 34, in which the defendant was enjoined because he was using his name "with certain circumstances, and in a manner calculated to mislead the public." In the instant case, the District Court found that that was what petitioner was doing (F. 86-96).

In the *Howe Scale* case, 198 U. S. 118, there was neither

confusion nor similarity of names. Moreover, the defendant in that case had made every effort to avoid confusion and deception. Said this Court, at page 139:

> "The use of two distinct surnames clearly differentiated the machines of defendant from those of plaintiff, and when defendant's cards, signs and catalogues, instructions to agents, etc., are considered, it seems to us that the record discloses, to use the language of Mr. Justice Field in the *Goodyear* case, a persistent effort on defendant's part 'to call the attention of the public to its own manufactured goods, and the places where they are to be had, and that it has no connection with the plaintiff'."

That the *Brown Chemical* case and the *Howe Scale* case must be strictly limited to their own facts is abundantly clear from what this court, by Mr. Justice Holmes, said later in *Waterman Co.* v. *Modern Pen Co.*, 235 U. S. 88, at page 94:

> "In support of this proposition the defendant lays hold of language in *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict*, 198 U. S. 118, 140, and in other books, to the effect that courts will not interfere with the use of a party's own name 'where the only confusion, if any, results from a similarity of the names and not from the manner of the use.' But, whatever generality of expression there may have been in the earlier cases, it now is established that when the use of his own name upon his goods by a late competitor will and does lead the public to understand that those goods are the product of a concern already established and well known under that name, and when the profit of the confusion is known to and, if that be material, is intended by the later man, the law will require him to take reasonable precautions to prevent the mistake."

William R. Warner & Co. v. *Eli Lilly & Co.*, 265 U. S. 526, simply held that the name "QUIN-COCO" is not an infringement of the name "COCO-QUININE" since both are merely

descriptive of the ingredients of the preparation to which they were attached. How petitioner sees conflict between that case and the instant case is difficult to understand.

It must be remembered that the use of a personal name trademark by individuals is not involved in this case because petitioner and respondent are both corporations. Petitioner's name is not Staley. Its name is Staley Milling Company. Unlike an individual, petitioner was not born with a name. It arbitrarily adopted the name Staley Milling Company, and its right to retain that name as a corporate name is not involved in this case. As was said in *Cook Chemical Co.* v. *Cook Paint & Varnish Co.*, 8 Cir. 1950, 185 F. 2d 365, 367:

> "* * * the right of Oscar T. Cook to use his own name in *his business* does not include the right in the defendant *corporation* to use the name in such a way as to lead the public to think that the plaintiff was the source of the defendant's products." (Emphasis ours.)

In *J. & P. Coats Limited* v. *John Coates Thread Co.*, D. Minn. 1905, 135 Fed. 177, 179, the court said:

> "* * * it is well settled by the authorities that a corporation has not the right to use the name of one of its incorporators for the purpose of unfair competition with an older dealer, where it is likely to do him injury, and that it will not be permitted to use that name if it is the name by which the older article is usually called for and described."

To the same effect is *National Distilling Co.* v. *Century Liquor & Cigar Co.*, 6 Cir. 1910, 183 Fed. 206.

In the leading case of *Thaddeus Davids Co.* v. *Davids*, 233 U. S. 461, the plaintiff had registered the name DAVIDS as a trademark for ink. This court affirmed the Circuit Court (190 Fed. 285) which enjoined Cortlandt I. Davids and Walter I. Davids from using their own name, DAVIDS,

as a trademark for their ink. Mr. Justice Hughes, speaking for the court, said at page 468:

> "Having the right to register its mark, the complainant was entitled to its protection as a valid trademark under the statute.* * * We agree with the Circuit Court that infringement was shown. The complainant put its mark 'DAVIDS' prominently at the top of its labels. The defendant, in the same position on its labels, put 'C. I. DAVIDS'. At the bottom of their labels the defendant placed 'DAVIDS MFG. CO.' The use of the name in this manner was a mere simulation of the complainant's mark which it had duly registered; it constituted a 'colorable imitation' within the meaning of the act. The decree of the Circuit Court accordingly restrained the defendant from the use of the words 'Davids Manufacturing Company', and from the use of the word 'Davids' at the top of their labels in connection with the business of making and selling inks. We think that the complainant was entitled to this measure of protection."

On page 25 of the petition, petitioner says that there was a failure here to distinguish family name trademarks from arbitrary marks, and the consequent failure to acknowledge and give effect to the rule of the *Brown Chemical* case, 139 U. S. 540. We have already distinguished the *Brown Chemical* case. The implication in petitioner's statement that STALEY'S is a weak mark, as contrasted to an arbitrary or fanciful mark, generally referred to as a strong mark, is not tenable, and finds no support in the authorities.

STALEY'S is not a weak mark. It has none of the infirmities of a weak mark. It is not descriptive like STEEM-ELECTRIC [*Steem-Electric Corp.* v. *Herzfeld-Phillipson Co.*, 7 Cir. 1940, 118 F. 2d 122], it is not laudatory like BLUE-RIBBON [*Pabst Brewing Co.* v. *Decatur Brewing Co.*, 7 Cir. 1922, 284 Fed. 110] and GOLD MEDAL [*France Milling Co.* v. *Washburn-Crosby Co.*, 2 Cir. 1925, 7 F. 2d 304], and it is not in general use like CONSUMERS [*Consumers Petroleum Co.*

v. *Consumers Co. of Illinois*, 7 Cir. 1948, 169 F. 2d 153], and Nox-All [*Pease* v. *Scott County Milling Co.*, E. D. Mo. 1925, 5 F. 2d 524]. These and similar cases are known as narrow protection cases. Their rationale, in the language of the court in the *France Milling* case, is that "One who takes a phrase which is the commonplace of self-praise, like Blue Ribbon or Gold Medal, must be content with that separate field which he labels with so undistinctive a mark." In the *Consumers* case, the court found that the mark was in use by 50 different Chicago concerns. *Pease* v. *Scott County Milling Co.*, E. D. Mo. 1925, 5 F. 2d 524, indicated that the mark Nox-All was used by 50 different concerns on as many different products. Personal name trademarks like Hershey, Swift and Gillette are often the strongest and most distinctive trademarks. The personal name trademark Ford was held to be a distinctive trademark and entitled to broad protection "in all cases * * * where deception or confusion of the public mind is likely to result." (*Ford Motor Co.* v. *Ford Insecticide Corp.*, E. D. Mich. 1947, 69 F. Supp. 935).

VI. The petition is not documented and it contains many gross misstatements of fact.

It would unduly extend this brief if we were to point out all of the inaccurate, distorted, misleading and unfair statements appearing in the petition. A few instances will suffice.

At pages 2, 3, 8, 18, 20 and 22 of its petition, petitioner refers to respondent's knowledge of and acquiescence in petitioner's use of respondent's trademark, when there is no evidence to support the statements. The findings of fact are to the contrary, as we have discussed at page 10.

At page 5, petitioner says that respondent's products "lost their identity in the end products of the mixed feed manufacturers". For evidence of the falsity of this

statement, see R. 199, 203 and record references to Findings 29, 64, 65, 66, 67, 68, 72, 73, 74, 79 and 82.

At page 5, petitioner says there is no evidence that respondent advertised any feed products prior to 1925 and that at no time did respondent advertise them to the consuming public. That is not true. See record references to Findings 28 and 80.

At page 7 of its petition, petitioner refers to its advertising expenditures. However, petitioner makes no mention of the fact that up until the time petitioner admittedly had notice of respondent's trademark the total of its advertising expenditures was only $1008.38 (R. 3691-92).

At pages 7, 8 and 10, petitioner states that respondent made no objection to petitioner's use until 1951. The record clearly shows, and the District Court decided that objection was made and that the controversy arose in 1949 (R. 2211, 2215).

At page 9 is the statement that as early as 1940 petitioner's letters to respondent bore the name STALEY in its trademark form. The fact is that the name Staley appeared only as a part of petitioner's corporate name without indication that it was a trademark (Dft. Ex. 222e, 222f; R. 2056; Dft. Bk. Ex. p. 20).[1]

At page 10, petitioner refers to an offer to discuss settlement made by respondent's president and infers threats of heavy legal expense if the offer was not accepted, and the assurance of ample supplies of raw materials if it were. The entire letter was introduced as Dft. Ex. 237, R. 2221; and is shown in Plaintiff's Book of Exhibits p. 57. A reading of the letter will disclose the unfairness of petitioner's inferences.

At page 10, petitioner says respondent began making mixed feeds in 1952. It is respondent's position that "feed

1. Reference is to Defendant's Book of Exhibits filed in the Court of Appeals and filed with the Petition herein.

is feed" and the lower courts so found (F. 56, 57). However, the fact is that respondent began making and selling mixed feeds in 1925 and sold over 650 million pounds between 1925 and 1950 (Plf. Ex. 50; R. 190; Plf. Bk. Ex. 9; R. 162-164, 169-171, 174-183, 185-187).

At page 15 of the petition, petitioner says that it had no notice of any adverse use or claim by respondent. This is directly contrary to Findings 42 and 43 and the testimony of petitioner's chief executive (R. 2310, 2368, 2410-11).

Conclusion.

We respectfully submit that stripped of its inaccurate and undocumented statements, the petition herein shows no error in the judgment sought to be reviewed; that the case involves primarily a question of fact upon which two courts below have unanimously agreed; that the judgment below does not conflict with decisions of this court or of other Courts of Appeal, and that there is no question involved of such general or unusual nature as warrants the grant of certiorari.

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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APPENDIX.

Findings of Fact.

(R. 3666.)

1. Plaintiff, A. E. Staley Manufacturing Company, is a Delaware corporation with its principal office and place of business in Decatur, Illinois.

Admitted in pleadings.

2. Defendant, Staley Milling Company, is a Missouri corporation with its principal office and place of business in North Kansas City, Missouri.

Admitted in pleadings.

3. This is a civil action arising under the trademark laws of the United States (Title 15 U. S. C., Secs. 1051 to 1127 inclusive). It is also a civil action between persons of different states wherein the amount in controversy exceeds the sum or value of Three Thousand Dollars ($3,000.00) exclusive of interest and costs.

Admitted in pleadings.

4. Both parties advertise and sell food for human consumption and feeds for livestock and poultry in interstate commerce under the trademark STALEY or STALEY's and did so at and prior to the filing of the original complaint herein.

R. 123-124.

5. Plaintiff's business was founded by A. E. Staley, Sr.

R. 116-118.

6. Plaintiff was incorporated under the laws of the State of Delaware on November 6, 1906.

Plfs. Ex. 40.

7. Defendant's business was founded in 1925 when it was incorporated as a Missouri corporation. J. H. Staley was one of the incorporators.

R. 2495-2496.

8. Neither J. H. Staley nor any member of his family had ever made or sold any product under the trademark STALEY or STALEY's prior to the date of defendant's incorporation in 1925.

R. 2290-2291.

9. Plaintiff's business is the processing of corn and soybeans and the manufacture and sale of a variety of products derived therefrom, including food and animal feeds, and the sale of whole grains.

R. 118-120, 123-124, 164-169, 441-450, 593-594, 613-614, 618-619.

Plfs. Ex. 59, 358, 359 (Bk. Ex. 39).

10. In 1912, plaintiff began the manufacture, advertising and sale of foods and feeds under the trademark STALEY's and has continuously manufactured, advertised and sold its principal foods and feeds under the trademark STALEY's since that date.

R. 118, 123-124, 126, 138-139, 144-147, 174-175, 232-233, 291-292, 677-682, 683-684, 686-687.

Plfs. Ex. KCA2 (Bk. Ex. 6), 42, 45, 46, 48 (Bk. Ex. 8), 86A, 86B, 87A, 87B, 87C, 87D, 88A, 88B, 89 (Bk. Ex. 14), 91, 90A-90I, 92A-92U (Bk. Ex. 15), 261 (Bk. Ex. 29).

11. The bags and containers in which plaintiff's feeds have been sold have always had printed thereon the trade-

mark STALEY's or, if sold in plain bags, have had tags attached thereto bearing said trademark.

R. 138-139, 140-142, 144-146, 152-153, 154-159, 162-189, 598-599, 607-608, 1112, 1781-1782, 1888-1889, 1890-1891, 1895, 1899-1900.

Plfs. Ex. 5 (Bk. Ex. 5), 6, 7, 8, 46, 48 (Bk. Ex. 8), 49, 56, 58, 59, 51 (Bk. Ex. 10), 52, 53, 55, 56, 57A, 57B, 57C, 58A, 58B, 58C, 60, 61, 65A, 65B, 65C, 65D, 65E, 65F, 66 (Bk. Ex. 12), 67, 68A, 68B, 68C, 69, 70A, 70B, 70C, 71 (Bk. Ex. 13), 72, 73, 74, 75, 260, 358, 359 (Bk. Ex. 39), KCA2 (Bk. Ex. 6).

12. Plaintiff's trademark STALEY's is generally displayed with a tail on the letter "Y" extending under the other letters of the name, commonly called a paraph. Plaintiff's first use of the paraph on foods was prior to 1921. Plaintiff's first registration of the trademark STALEY's in 1921 contained the paraph.

R. 143-144, 145, 146, 152-153, 155, 156, 211-212.

Plfs. Ex. KCA2 (Bk. Ex. 6), 5 (Bk. Ex. 5), 6, 7, 8, 43, 44, 45, 47, 48 (Bk. Ex. 8), 49, 51 (Bk. Ex. 10), 52, 53 (Bk. Ex. 11), 55, 56, 57A, 57B, 57C, 58A, 58B, 58C, 60, 65A-65F, 66 (Bk. Ex. 12), 67, 68A, 68B, 68C, 69, 70A, 70B, 70C, 71 (Bk. Ex. 13), 72, 73, 74, 75, 77A, 77E.

13. Since 1912, plaintiff has also used as a trademark on its feeds a target or disk design. This trademark was registered by plaintiff in 1926.

R. 138-139, 172, 175, 179, 185-186, 187, 189, 217, 683-684, 686-687, 1889-1891.

Plfs. Ex. 7, 46, 48 (Bk. Ex. 8), 61, 66 (Bk. Ex. 12), 68A, 68B, 68C, 71 (Bk. Ex. 13), 70A, 70B, 70C, 74, 79.

14. In 1922, plaintiff began processing soybeans and began the production and sale of the products derived therefrom, including foods for human consumption and animal feeds.

R. 119, 121-122, Plfs. Ex. 53 (Bk. Ex. 11).

15. In 1925, plaintiff began the sale of whole grains, including corn, wheat and oats, under the trademark STALEY's. Some of these whole grains were sold for livestock feeding.

R. 119, 166.
Plfs. Ex. 59, 358, 359 (Bk. Ex. 39).

16. Plaintiff's use of STALEY's as a trademark for food for human consumption and for animal feeds was long prior to defendant's use of STALEY as a trademark.

R. 118-120, 123-124, 126, 138-139, 144-147, 465, 677-680, 683-684, 686-687.
Plfs. Ex. 46, 48 (Bk. Ex. 8), 50 (Bk. Ex. 9).

17. When defendant was founded in 1925, under the corporate name Staley Milling Company, plaintiff was using STALEY's as a trademark for foods and feeds on a national scale.

R. 124, 300-302, 303-304.
Plfs. Ex. 96, 97 (Bk. Ex. 23).

18. Plaintiff has obtained and now owns fifteen registrations of the trademark STALEY's in various combinations in the United States Patent Office for its various products including food for human consumption and animal feeds, the first of which was obtained in 1921.

R. 207-211.
Plfs. Ex. 77A-77O.

19. Plaintiff has obtained seventeen registrations in the United States Patent Office of trademarks which include the syllable "STA", one of which is STAVITE, the first of which was obtained in 1926.

R. 212-217, 378, 379, Plfs. Ex. 78A-78Q.

20. Defendant has never used any trademarks other than STALEY which included the syllable "STA".

R. 3685-3690.

21. Defendant, in 1937, registered a mark containing the words "STALEY'S RECORD", a part of which it abandoned in 1946.

R. 1951, 2310, 2396, 3688.

22. Defendant's first trademark for feeds was FOUR BELLS, which it registered in the United States Patent Office in 1925.

R. 306, 2376, 2572.
Plfs. Ex. 98, 98A (Bk. Ex. 24), 99A, 100, 101.
Dfts. Ex. 203A (Bk. Ex. 52).

23. In addition to the mark "STALEY'S", Defendant uses various trademarks for foods and feeds, among which are FOUR BELLS, PIG MAMA, PRO-LASS, HOG UNCLES, SHUR GAIN, DR. PIG, ROYAL SCOT, BLESSED EVENT, ATOMS, DRYKOW, and ALPURPUS.

R. 1923, 1947, 2281-2283, 2371, 2421, 3685-3690.

24. From 1912 through 1950, (the last full calendar year before this suit was filed) plaintiff sold its feeds under the trademark STALEY'S.

R. 118-120, 123-124, 133, 138-139, 140-142, 144-146, 152-153, 154-159, 162-189, 677-678, 683-684, 686-687, 1888, 1891, 1895, 1899-1900.
Plfs. Ex. 5 (Bk. Ex. 5), 6, 7, 8, 42, 45, 46, 48 (Bk. Ex. 8), 51 (Bk. Ex. 10), 52, 53 (Bk. Ex. 11), 55, 56, 57A, 57B, 57C, 58, 58A, 58B, 58C, 59, 60, 61, 65A, 65B, 65C, 65D, 65E, 65F, 66 (Bk. Ex. 12), 67, 68A, 68B, 68C, 69, 70A, 70B, 70C, 71 (Bk. Ex. 13), 72, 73, 74, 75, 86A, 86B, 87A, 87B, 87C, 87D, 88A, 88B, 89 (Bk. Ex. 14), 91, 90A-90I, 92A (Bk. Ex. 15)-92U, 358, 359 (Bk. Ex. 39), KCA2 (Bk. Ex. 6).

25. From 1912 through 1950, plaintiff's sales of products manufactured from corn and soybeans were in excess of 34,000,000,000 pounds, having a value in excess of $1,400,000,000.

R. 126, Plfs. Ex. 42.

26. From 1912 through 1950, plaintiff's feed sales amounted to more than 17,400,000,000 pounds, having a value in excess of $330,000,000.

R. 191-192, Plfs. Ex. 50 (Bk. Ex. 9), 350 (Bk. Ex. 37).

27. From 1912 through 1950, plaintiff sold in excess of 1,500,000,000 pounds of whole grains.

R. 165, Plfs. Ex. 50 (Bk. Ex. 9).

28. From 1924 through 1950, plaintiff expended in excess of $10,400,000 in advertising its various products, including feeds, most of which were advertised and sold under its trademark STALEY's, and plaintiff also expended large sums of money in sampling and other forms of promotion in the introduction and sale of its various products, including feeds, under its trademark STALEY's. Plaintiff has no records of any advertising expenditures prior to 1924.

R. 232-234, 292, 275-280, 281, 594-598, 601-605, 622, 3181-3184, 3647-3651.

Plfs. Ex. 29, 29A, 43, 44, 45, 47, 59, 82, 83, 84, 85A-85H, 85I-85P, 85Q-85X, 85AA-85FE, 85FF-85KK, 86A, 86B, 87A 87D, 88A-88C, 89 (Bk. Ex. 14), 91, 90A-90I, 92A (Bk. Ex. 15), 92B, 92C, 92D, 92E, 92F, 92G, 92H, 92I, 92J, 92K, 92L, 92M, 92N, 92O, 92P, 92Q, 92R, 92S, 92T, 92U, 258-349, 259 (Bk. Ex. 27), 261 (Bk. Ex. 29), 270 (Bk. Ex. 31), 274 (Bk. Ex. 32), 408B (Bk. Ex. 46), 408D (Bk. Ex. 48), 350A, 351, 352, 353, 354, 355, 356, 357, 358A, 359A, 360, 360A, 361, 362, 363, 364, 365, 366, 367, 368, 368A, 369, 369A, 370 (Bk. Ex. 40), 371, 372, 373, 374, 375A, 376A, 377A, 378A, 379A, 385.

29. Plaintiff's feeds are and have been at all pertinent times, sold and distributed through retail feed dealers for resale to farmers, ranchers and feeders, and are also sold to feed manufacturers.

R. 77, 88, 103, 138-139, 144-146, 147-148, 149-152, 154, 162-163, 169, 171, 173, 174, 178, 179-180, 182, 184, 185,

186-187, 188-189, 203-205, 232, 553, 594-595, 615-616, 622, 628, 635-636, 850-851, 853, 857-859, 1103, 1193-1195, 1195-1198, 1210-1212, 1352-1356, 1592, 1681-1682, 1728, 1750, 1778, 1814, 1830, 1860, 1873, 1879, 2559, 2576, 3073, 3099, 3143, 3181, 3319, 3445.

Plfs. Ex. 63, 88B.

30. The trademark STALEY's has identified and has been distinctive of plaintiff's products, both food and feeds, in commerce to the trade and public since 1912.

R. 133, 138-139, 677-682, 683-684, 798, 802, 915-916, 925, 927, 951-952, 967-968, 1100, 1193-1195, 1195-1198, 1202, 1223-1225, 1251-1253, 1263-1265, 1269, 1326-1328, 1332, 1352-1356, 1368-1369, 1372, 1379-1381, 1509, 1715-1717, 1751, 1753-1754, 1758, 1767-1768, 1774, 1778, 1805-1806, 1809, 1830-1834, 1854, 1856, 1860-1862, 1865, 1874-1875, 1881, 3063, 3100, 3600.

31. In advertising and selling products from grain, such as starches and syrups, under the trademark STALEY's, plaintiff has created a widespread secondary meaning for STALEY's in connection with grain products generally, including feeds.

R. 692-693, 697, 701-702, 706-708, 722, 728-729, 742-743, 746-747, 770, 779, 789, 790, 802, 817-818, 895-898, 925, 936-937, 1009-1015, 1063-1064, 1073-1074, 1082, 1085, 1088-1089, 1091, 1096, 1098, 1103, 1108-1109, 1140-1146, 1179-1180, 1195-1198, 1211, 1224, 1264, 1269, 1271, 1274, 1279, 1302-1304, 1327-1328, 1332, 1340, 1353-1354, 1368-1369, 1372, 1380, 1389, 1398, 1400-1402, 1414-1415, 1423-1425, 1439-1441, 1484, 1491-1492, 1500, 1509, 1524, 1530-1531, 1589-1591, 1600, 1608, 1610-1611, 1651-1652, 1655-1656, 1669, 1673-1674, 1676, 1679, 1693-1694, 1704-1706, 1714, 1715-1716, 1723, 1728, 1741-1743, 1745-1747, 1753-1754, 1760, 1769, 1774, 1796, 1809, 1859-1861, 1881, 3445-3446, 3600.

32. For many years plaintiff has been, and now is, well and favorably known throughout the United States as a producer of reliable and meritorious products from corn

and soybeans advertised and sold under the trademark STALEY'S.

R. 366, 692-693, 703, 726, 728-729, 748, 754, 758-759, 778-779, 791, 796-797, 802-803, 812-813, 819-820, 908-909, 914-915, 918, 925-926, 933-934, 936, 1003, 1073, 1084-1085, 1091, 1184, 1193-1195, 1196-1198, 1205, 1210-1212, 1251-1253, 1338-1341, 1352-1356, 1368-1369, 1379-1381, 1388-1390, 1393-1395, 1430-1431, 1501-1502, 1611, 1620, 1623, 1653, 1723, 1729, 1742, 1752, 1760, 1776, 1781, 1789, 1797, 1801-1802, 1805-1806, 2560-2570.

33. Plaintiff has long been known and commonly referred to as "STALEY" or "STALEY'S" by the trade and general public.

R. 366-367, 373, 624, 692-693, 696, 697, 701-702, 706-708, 722, 728-729, 743, 746, 748-750, 754, 756-759, 772, 778-779, 781, 789, 791, 794, 802, 817-818, 897, 908-909, 914-915, 918, 925-926, 941, 952, 967, 1069-1070, 1073-1074, 1088-1089, 1140-1146, 1179-1180, 1193-1198, 1202, 1205, 1210-1212, 1213, 1271-1274, 1279-1281, 1304, 1326-1328, 1332-1333, 1337, 1340, 1355, 1365, 1368-1370, 1377-1378, 1388-1391, 1398-1399, 1400, 1414-1417, 1422-1425, 1429, 1430, 1439, 1449, 1460-1462, 1466, 1484, 1485, 1491-1492, 1509, 1524, 1526-1527, 1546, 1560, 1565-1566, 1569, 1570, 1572, 1590-1591, 1592, 1600, 1608, 1611, 1619-1620, 1652, 1656, 1669, 1673-1674, 1676, 1678-1679, 1693, 1704-1706, 1714-1716, 1723, 1725, 1735-1736, 1742-1743, 1746, 1747, 1752-1754, 1758, 1770-1771, 1774, 1778, 1781, 1790-1792, 1796, 1798, 1801-1802, 1809, 1816, 1831, 1838, 1844, 1849-1850, 1853, 1855-1856, 1858, 1860, 1863, 1878, 1881-1882, 2786, 3446, 3599-3600.

34. Plaintiff has built up, and now has, a large and valuable business in the manufacture and sale of corn and soybean products, including food and feeds, which are identified by the trademark STALEY'S, aggregating many millions of dollars annually, and plaintiff thereby has a valuable good will in said trademark.

R. 120, 124-133, 138, 206-207, 311, 313, 366, 373, 624, 677-679, 692-693, 697, 701-702, 703, 706-708, 722, 728-

729, 742-743, 746-747, 748, 754, 758, 778-779, 781, 782, 789, 790, 791, 794, 796-797, 802, 802-803, 812-813, 817-818, 819-820, 894-897, 908-909, 914-915, 918, 925, 925-926, 927, 933-934, 936-937, 941, 950-952, 956-958, 967, 1009-1015, 1063-1064, 1073-1074, 1084-1086, 1089, 1091-1092, 1100, 1140-1146, 1184, 1193-1195, 1195-1198, 1202, 1205, 1210-1212, 1213, 1223-1225, 1251-1253, 1254, 1269, 1270-1271, 1274, 1279, 1302-1304, 1306, 1310-1311, 1326-1328, 1332, 1337, 1338-1340, 1352-1356, 1368-1369, 1371, 1372, 1379-1380, 1386-1387, 1388-1390, 1393-1395, 1399-1402, 1414-1417, 1423, 1425, 1429, 1430-1431, 1439-1441, 1449-1451, 1460-1461, 1484-1486, 1491-1492, 1500, 1501, 1508-1509, 1523-1526, 1530-1531, 1533-1534, 1546, 1547-1548, 1557, 1560, 1565, 1569, 1570, 1572-1573, 1582, 1590-1591, 1592, 1600, 1608, 1610-1611, 1620-1621, 1623-1624, 1652-1654, 1655-1656, 1669, 1673-1674, 1676, 1678-1679, 1692-1693, 1704-1705, 1706, 1712-1713, 1715-1716, 1723-1725, 1728-1729, 1735-1736, 1741-1742, 1746, 1747-1748, 1751-1754, 1758-1759, 1761-1762, 1767, 1770-1771, 1773-1774, 1776, 1778, 1789, 1791-1792, 1796, 1801-1802, 1805-1806, 1809-1811, 1815-1816, 1820, 1830-1831, 1844-1845, 1853, 1857, 1859-1862, 1865, 1871, 1873-1874, 1878-1879, 1881, 2386, 2560, 2570, 2786, 3063, 3099, 3305, 3445, 3450, 3599-3600.

Plfs. Ex. 42 (R. 126).

35. Defendant is engaged in the processing of corn and the manufacture and sale of food for human consumption and feeds for livestock and poultry, most of which are sold and advertised under the trademark STALEY.

Admitted in pleadings, Amended Complaint Paragraph 14 (R. 6), Answer Paragraph 5 (R. 29), Answer Paragraph 11 (R. 30).

36. Defendant's feeds are sold and distributed through retail feed dealers for resale to farmers, ranchers and feeders, and are also sold to feed manufacturers.

R. 770, 850-851, 2272-2273, 3366, 3367, 3368-3369, 3371-3372.

37. Defendant originally sold its feeds under the trademark FOUR BELLS but by a gradual process came to use the name STALEY and STALEY FEEDS on its bags in a fashion very similar to plaintiff's use of the trademark STALEY's on feeds.

The gradual process consisted of moving the words STALEY MILLING COMPANY to a position above 4 BELLS; then later, instead of using STALEY MILLING COMPANY above 4 BELLS, using STALEY alone in script; then later, using STALEY with a paraph; then using STALEY with a paraph and in logotype similar to the paraph and logotype used by plaintiff in its trademark STALEY's; and then later, by adding a red disk design in some respects similar to the disk or target design used by plaintiff and using it as a background for STALEY on its bags and containers. These changes took place between the years 1925 and 1946.

Plfs. Ex. 99A, 100, 103, 104, 108 (shown at pages 44-46 of Plaintiff's Brief).

R. 294, 2380-2385, 306-310, 349-350, 1335, 1587-1588, 1784-1785, 1962-1963, 1983, 2005, 2018, 2039-2040, 2056-2057, 2061, 2159, 2151-2152, 2169, 2219, 2376, 2395, 2397-2401, 2572, 3690-3691.

Plfs. Ex. 18, 98, 98A (Bk. Ex. 24), 99, 100A, 101, 104, 105, 106, 107, 108A, 109, 109A, 110.

Dfts. Ex. 203A (Bk. Ex. 52), 203F, 203G, 219E-219I, 219P, 221B, 221G, 221M, 226A, pp. 22, 25, 30, 35, 226B, 226C, pp. 4, 6 (Bk. Ex. 54), 7, 10, 17, 43 (Bk. Ex. 55), 73, 76, 226D, p. 15.

38. It does not appear that plaintiff knew of or acquiesced in any of these changes.

R. 294-295, 2675-2676, 2681-2685, 3646, 3141, 3158-3159, 3164, 3175-3177, 3197, 3201, 3204, 3376-3378.

39. During the period in which these changes were made, defendant subordinated its corporate name while giving increased prominence to STALEY as a trademark.

R. 1784, 2381-2382, 2399-2401.

Plfs. Ex. 18.

Dfts. Ex. 226B, p. 32, 226C, pp. 6 (Bk. Ex. 54), 7, 43 (Bk. Ex. 55), 10, 21, 23, 37, 38, 39, 40, 41, 42, 63, 72, 73, 74, 75, 76, 77, 226E, pp. 16, 17, 22.

40. In 1949, defendant applied for a license to do business in the State of Illinois. About this time, defendant distributed fans at the Illinois State Fair and placed road signs within a radius of forty miles of plaintiff's plant each bearing the words STALEY FEEDS, without displaying its corporate name thereon.

R. 27, 292, 311-312.

Plfs. Ex. 93 (Bk. Ex. 16) and 110.

41. Defendant's use of STALEY and STALEY's on and in connection with its products has constituted a "progressive encroachment" upon plaintiff's use of and rights in the trademark STALEY's.

R. 294, 306-309, 349-350, 1587, 1784, 1962-1963, 1983, 2005, 2018, 2039-2040, 2061, 2018-2019, 2155-2159, 2169, 2285, 2376, 2380-2381, 2382-2383, 2395, 2397-2401, 3690-3691.

Plfs. Ex. 18, 98, 98A (Bk. Ex. 24), 99A, 100, 100A, 101, 102, 103, 104, 105, 106, 107, 108, 108A, 109, 109A, 110.

Dfts. Ex. 203A (Bk. Ex. 52), 203F, 203G, 219E-219I, 219P, 221B, 221G, 221M, 226A, pp. 22, 25, 30, 35, 226B, 226C, pp. 4, 6 (Bk. Ex. 54), 7, 10, 17, 43 (Bk. Ex. 55), 73, 76, 226D, p. 15.

42. At least as early as 1934, defendant had actual notice of plaintiff's use of STALEY's as a trademark for feeds.

R. 144-146, 152, 153, 1947-1948, 2881, 2310, 2312, 2368, 2410-2411, 2414.

Plfs. Ex. 51 (Bk. Ex. 10), 53 (Bk. Ex. 11).

Dfts. Ex. 213.

43. It was in 1934 that defendant began buying plaintiff's feed in bags bearing the trademark STALEY's at the top of the bag and bearing the red target or disk design.

R. 144-146, 152-153, 1947-1948, 2297-2299, 2310, 2312, 2368, 2410-2411.
Plfs. Ex. 51 (Bk. Ex. 10), 53 (Bk. Ex. 11).
Dfts. Ex. 213 (R. 1947-1949).

44. Defendant's expenditures and investments since 1934 have been made with full knowledge that plaintiff was using the trademark STALEY's on feeds.

R. 152-153, 174-175, 293, 1046-1057, 1947-1948, 2297, 2310, 2312, 2368, 2383, 2395, 2398, 2410-2411, 2414, 2423, 2424.
Plfs. Ex. 51 (Bk. Ex. 10) 53 (Bk. Ex. 11), KCA2, (Bk. Ex. 6).
Dfts. Ex. 213, 247 (R. 1947-1949).

45. Plaintiff's first knowledge of the wide extent of defendant's use of STALEY or STALEY's as a trademark for its products was in 1949 shortly after defendant sought plaintiff's consent to qualify to do business in the State of Illinois, at which time plaintiff objected to said use.

R. 294-295, 2675-2676, 2681-2682, 2685, 3158-3159, 3161, 3164, 3175-3177, 3197, 3201, 3204, 3376-3378.
Plfs. Ex. 395, 415 (Bk. Ex. 50).

46. Defendant's operations were small in the early years.

R. 294-295, 3691-3692, 2693.
Plfs. Ex. 408J.
Dfts. Ex. 226C, p. 6 (Bk. Ex. 54).

47. In later years, its sales were concentrated largely in Kansas and Missouri.

R. 295-297, 297-299.
Plfs. Ex. 94A-94F, (Bk. Ex. 17-22), 95A-95F, 408F (Bk. Ex. 49).

48. The evidence does not disclose that plaintiff has ever purchased any of defendant's products.

49. Defendant's invasion of plaintiff's field was of a gradual or progressive character.

R. 294, 306-309, 349-350, 1962-1963, 1983, 2005, 2018, 2039-2040, 2061, 2118-2119, 2155-2159, 2376, 2380-2385, 2395, 2397-2399, 2572, 3690-3693.

Plfs. Ex. 18, 98, 98A (Bk. Ex. 24), 99A, 100, 100A, 101, 102, 103, 104, 105, 106, 107, 108, 108A, 109, 109A, 110, 408J, 408D (Bk. Ex. 48).

Dfts. Ex. 203A (Bk. Ex. 52), 203F, 203G, 219E-219I, 219P, 221B, 221G, 221M, 226A, pp. 22, 25, 30, 35, 226B, p. 32, 226C, pp. 4, 6 (Bk. Ex. 54), 10, 17, 21, 23, 37, 38, 39, 40, 41, 42, 43 (Bk. Ex. 55), 63, 72, 74, 75, 76, 77, 226D, p. 15, 226E, pp. 16, 17, 22.

50. Plaintiff's relationship with defendant for several years, including the sale of soybean oil meal to defendant, was not sufficient to charge plaintiff with notice of defendant's use of the trademark STALEY or STALEY'S.

R. 294-295, 562-563, 646-648, 649, 665, 669, 2675-2676, 2681-2682, 2685, 3130, 3158-3159, 3161, 3164, 3175-3177, 3197, 3201, 3204, 3376-3378, 1433-1434, 1483-1489, 1508-1513, 1522-1524, 1539-1541, 1572-1574, 1576-1577, 1581-1582, 1534, 1680-1685, 1690-1691, 1699-1700, 1702, 1705-1706, 1849.

Plfs. Ex. 395, 408J.

Dfts. Ex. 226C, p. 6 (Bk. Ex. 54).

51. Plaintiff, when it sold soybean oil meal to defendant, was not chargeable with notice that defendant was using STALEY as a trademark on any of its products.

R. 294-295, 297-300, 562-563, 2425, 2675-2676, 2681-2682, 2685, 3158-3159, 3161, 3164, 3175-3177, 3197, 3201, 3204, 3376-3378.

Plfs. Ex. 395, 408J, 415.

Dfts. Ex. 226C, p. 6 (Bk. Ex. 54).

52. Substantially one-half of defendant's total advertising expenditures were made after plaintiff's objection to defendant's use of STALEY as a trademark in 1949.

R. 3691-3692. Dfts. Ex. 486.

53. A large part of defendant's total advertising expenditures were incurred after this suit was filed in 1951.

R. 3691-3692. Dfts. Ex. 486.

54. Plaintiff never consented to defendant's use of STALEY as a trademark.

R. 3646.

55. Defendant, in adopting and using the trademark STALEY, did not rely on any act or omission of plaintiff.

R. 2390-2391, 3646.

Dfts. Ans. to Amended Complaint, Paragraph 28 (R. 34).

56. Plaintiff's feed products are and always have been in the same field and competitive with defendant's feed products, notwithstanding the fact that a large part of plaintiff's feed products have been sold without the mixing of ingredients and a large part of defendant's feed products have been sold after the mixing of ingredients.

Plaintiff: R. 118-120, 133, 138-139, 142-152, 154, 162-189, 193-205, 218-235, 247-251, 275-280, 281-292, 467-468, 553, 593-600, 603-609, 615-617, 635-636, 770, 850-851, 882, 1096, 1103, 1194, 1271-1272, 1357, 1368-1369, 1389-1390, 1591, 1598, 1667-1669, 1673, 1681. 1714, 1728, 1735, 1751-1752, 1764-1765, 1769, 1778, 1832, 1841, 1860, 1878-1879, 2233-2248, 2706, 3073, 3099-3100, 3143, 3154-3155, 3183-3184, 3366-3369, 3439, 3445, 3585-3587, 3697.

Plfs. Ex. 50 (Bk. Ex. 9), 59, 63, 80, 81, 82, 83, 84, 85A-85H, 85I-85P, 85Q-85X, 85AA-85EE, 85FF-85KK, 88A-88C, 89 (Bk. Ex. 14), 90A-90I, 92A (Bk. Ex. 15)-92U, 259 (Bk. Ex. 27), 357A, 357B, 357C, 357D, 358, 359 (Bk. Ex. 39) 360, 369, 385, 404 (Bk. Ex. 41).

Plfs. Decatur Ex. 1 (Bk. Ex. 7), 408D (Bk. Ex. 48).

Defendant: R. 2233-2239, 2249, 2272-2277, 2293, 2351, 2365, 2387-2388, 2435-2436, 2481, 2706, 3318-3319, 3361-3362, 3371, 3428, 3684.

Plfs. Ex. 98, 404 (Bk. Ex. 41).

Dfts. Ex. 207A-207F, 209A1-209A9, 209B1-209B5, 221B, 221E, 221F, 221H, 221I (Bk. Ex. 53), 221M, 221P, 221Q.

Dfts. Answer to Amended Complaint, Paragraph 18 (R. 32).

57. Both parties are in many respects in the same business.

Plaintiff: R. 115, 118-120, 123-124, 133, 138-139, 144-154, 162-189, 193-195, 203-205, 218-235, 247-251, 374, 467-468, 553, 593-596, 599-600, 603-610, 613-619, 622, 628, 635-636, 758-760, 850-851, 858-859, 1073-1074, 1095-1097, 1193-1196, 1271-1272, 1336, 1346, 1357, 1375, 1392, 1592, 1598, 1633-1634, 1668-1669, 1673, 1681, 1714, 1728, 1735, 1751-1752, 1763, 1769, 1778, 1814, 1832, 1841, 1860, 1873, 1878-1879, 2234-2237, 2529-2532, 2559, 2706, 3073, 3099-3100, 3148, 3154-3155, 3183-3184, 3306, 3361-3362, 3445, 3585-3587, 3607.

Plfs. Ex. 50 (Bk. Ex. 9), 59, 63, 80, 81, 82, 83, 84, 85A-85H, 85I-85P, 85Q-85X, 85AA-85EE, 85FF-85KK, 88A-88C, 89 (Bk. Ex. 14), 90A-90I, 92A (Bk. Ex. 15)-92U, 357A, 357B, 357C, 357D, 358, 359, 360, 369, 385, 404 (Bk. Ex. 41). Plfs. Decatur Ex. 1 (Bk. Ex. 7).

Defendant: R. 1922-1923, 2148, 2231-2239, 2249, 2272-2277, 2283-2285, 2288-2289, 2292-2293, 2297, 2299-2300, 2351, 2365, 2387-2388, 2435-2436, 2481, 2482-2483, 2485-2486, 2706, 3319, 3361-3362, 3366-3367, 3371, 3428, 3684.

Plfs. Ex. 98, 404 (Bk. Ex. 41).

Dfts. Ex. 207A-207F, 209A1-209A9, 209B1-209B5, 221B, 221E, 221F, 221H, 221I (Bk. Ex. 53), 221M, 221P, 221Q.

Dfts. Answer to Amended Complaint, Paragraph 18 (R. 32).

58. Both parties have processed and do process corn.

Plaintiff: R. 114-115, 431-432.
Defendant: R. 2148, 2231-2239, 2283-2285, 2297, 2299-2300, 3684.

59. Both parties have made and do make food products for human consumption from corn.

Plaintiff: R. 114-115.
Defendant: R. 2608, 2232, 2283-2285.

60. Both parties have sold and do sell food products to wholesale and retail grocers.

Plaintiff: R. 124-125.
Defendant: R. 2231-2232, 2288-2289.

61. Both parties have made and do make brewers grits.

Plaintiff: R. 123.
Defendant: R. 2148, 2283, 3684.

62. Both parties have made and do make corn oil.

Plaintiff: R. 118, 124.
Defendant: R. 2283, 3684.

63. Both parties have made and do make feeds for livestock and poultry.

Plaintiff: R. 118-120, 124, 133.
Defendant: R. 1922, 3684.
Dfts. Answer to Amended Complaint, Paragraph 18 (R. 32).

64. Both parties have made and do make feed containing but a single ingredient.

Plaintiff: R. 144-145, 147, 165, 171, 173, 184, 189.
Defendant: R. 2299-2300, 2387-2388, 2433-2436, 3684.
Plfs. Ex. 404 (Bk. Ex. 41).
Dfts. Answer to Amended Complaint, Paragraph 18 (R. 32).

65. Both parties have made and do make multi-ingredient feeds.

Plaintiff: R. 169, 174, 178, 179, 185-186, 593, 599-600, 605, 611, 1344-1345, 1633-1632, 1763, 1769.
Defendant: R. 1922, 2234, 3684.
Dfts. Answer to Amended Complaint, Paragraph 18 (R. 32).

66. Both parties have made and do make feeds which are fed "straight", that is, in the form in which the feeds are made and without being supplemented by or mixed with other feeds.

Plaintiff: R. 143, 174-175, 468, 1272, 1669, 1673, 1714, 1728, 1752, 1830, 1841, 2529, 3073, 3154-3155, 3306, 3585-3587.
Defendant: R. 2234, 2237, 2352, 3684.

67. Both parties have made and do make feeds which are fed as supplements to other feeds.

Plaintiff: R. 470-471, 593, 599, 758-759, 1096, 1108, 1392, 1598, 1682, 3439, 3585-3587, 3607.
Defendant: R. 2234-2239, 2249, 3361-3362, 3367-3369, 3428, 3435, 3684.

68. Both parties have sold and do sell whole grains.

Plaintiff: R. 119, 165-169, 594, 613, 614, 618-619.
Plfs. Ex. 50 (Bk. Ex. 9), 59, 358, 359 (Bk. Ex. 39).
Defendant: R. 1923, 2276, 2277.
Plfs. Ex. 404 (Bk. Ex. 41), Dfts. Ex. 201.
Dfts. Answer to Amended Complaint, Paragraph 18 (R. 32).

69. Both parties have made and do make feeds used as ingredients in other feeds.

Plaintiff: R. 143, 184, 374, 2272, 2273-2274.
Defendant: R. 95, 103, 2387-2388, 3319, 3367-3369, 3371-3372, 3428-3429, 3435, 3684.
Plfs. Ex. 404 (Bk. Ex. 41), Dfts. Ex. 221I (Bk. Ex. 53).

70. The respective customers of both parties have used and do use the respective feeds of both parties for custom mixing.

Plaintiff: R. 615-617.
Defendant: R. 3319, 3367-3369, 3371, 3428-3429, 3435.

71. Both parties have made and do make feeds to meet special nutritional needs.

Plaintiff: R. 166, 603-610, 2965, 3148, 3183-3184, 3623-3624, 3626.
Defendant: R. 2292.

72. Both parties have sold and do sell feeds to ranchers and farmers for mixing with other feedstuffs, and also to feed manufacturers.

Plaintiff: R. 174, 374, 594, 618-620, 1673, 154, 3154-3155, 2947, 3439.
Plfs. Ex. 408D (Bk. Ex. 48).
Defendant: R. 1949, 2234-2238, 2272-2277, 2387-2388, 2435-2436, 3319, 3367-3369, 3361-3362, 3371-3372, 3422-3423, 3428-3429, 3435, 3454.

73. Both parties have sold and do sell feeds to dealers for sale to farmers, feeders and ranchers.

Plaintiff: R. 138, 145, 148, 149-152, 154, 162-163, 169, 171, 173, 174, 178, 180, 182, 184, 185, 187, 189, 203-205, 232, 553, 594, 595-596, 615-616, 622, 628, 635-636, 850-851, 853, 857-859, 1103, 1194, 1375-1376, 1592, 1681, 1728, 1763, 1832, 1835, 1830, 1841, 1860, 1873, 1879, 3073, 3099-3100, 3143, 3445.
Plfs. Ex. 63, 88B.
Defendant: R. 2272-2274, 3366, 3445, 32, 1922-1923, 1926-1927, 1931, 1937, 1945, 1978.

74. The feeds of both parties have been sold and are sold in retail feed stores.

Plaintiff: R. 138, 154, 162-163, 169, 171, 173, 174, 178, 180, 182, 184, 185, 187, 203-205, 232, 553, 594, 595-

596, 615-616, 622, 628, 635-636, 850-851, 1194, 1357, 1592, 1681, 1728, 1750, 1778, 1814, 1830, 1860, 1873, 3073, 3099-3100, 3632.
Plfs. Ex. 63, 88B.
Defendant: R. 3445.

75. Both parties have sold and do sell their feeds in bags or sacks.

Plaintiff: R. 138, 141, 189, 2647.
Defendant: R. 2275, 2483-2484.

76. Both parties have sold and do sell their feeds in bulk.

Plaintiff: R. 141, 166, 188-189.
Defendant: R. 2275, 2482-2483.

77. Both parties have sold and do sell their feeds in printed bags.

Plaintiff: R. 138, 141, 144-146, 154-155, 162-163, 166, 171, 173, 174-175, 178, 185-186, 187, 607-608.
Defendant: R. 2275, 2647.

78. Both parties have sold and do sell their feeds in plain bags with tags attached.

Plaintiff: R. 141, 145-146, 180, 184, 185, 188, 2647.
Plfs. Ex. 5 (Bk. Ex. 5).
Defendant: R. 2275, 2482, 2486-2487.

79. The feeds of both parties have been and are fed by farmers and feeders in self-feeders along with home-grown grain.

Plaintiff: R. 770, 848, 1096, 1669, 3607.
Defendant: R. 2237, 2274, 3318-3319, 3361-3362, 3368-3369, 3428.

80. Both parties have advertised and do advertise their feeds in farm newspapers, farm journals, and by circulars, direct mail and point-of-sale posters and placards.

Plaintiff: R. 168, 170, 183, 218-227, 231-235, 247-292, 596, 603, 660, 851.

Pltfs. Ex. 59, 80, 81, 82, 83, 84, 85A-85H, 85I-85P, 85Q-85X, 85AA-85EE, 85FF-85KK, 88A-88C, 89 (Bk. Ex. 14), 90A-90I, 91, 92A-92U (Bk. Ex. 15), 360, 369, 385, Plfs. Decatur Ex. 1 (Bk. Ex. 7), 261 (Bk. Ex. 29), 259 (Bk. Ex. 27), 270 (Bk. Ex. 31), 408B (Bk. Ex. 46), 408D (Bk. Ex. 48).

Defendant: Pifs. Ex. 98.

Dfts. Ex. 209A1-209A9, 209B1-209B5, 221E, 221F, 221H, 221M, 221P, 221Q.

81. Both parties compete in the sale of their feeds for the farmer's dollar.

Plaintiff: R. 882-883, 1598, 2351, 2706, 2967, 3439, 3585-3587, 3607, 3611-3612.

Plfs. Ex. 408D (Bk. Ex. 48).

Defendant: R. 2706, 2967, 3684.

82. When plaintiff began the manufacture of feeds in 1912, most feeds purchased by farmers were unmixed or single-ingredient feeds. In recent years, the trend has been to multiple-ingredient feeds, and plaintiff expanded its line of feeds to include more of such multiple-ingredient feeds.

R. 142-143, 149-152, 154, 410-420, 2365, 2525, 2520-2523, 2530-2531, 2735-2736, 3148, 3150.

83. The feeds of both parties are subject to registration and to inspection by the Departments of Agriculture of the respective states in which they are sold.

Plaintiff: R. 193-195.

Plfs. Ex. 357A, 357B, 357C, 357D.

Defendant: Dfts. Ex. 207A-207F.

84. The feeds of both parties have been progressively developed and improved.

Plaintiff: R. 165, 169, 170-171, 174, 227-230, 414-420, 603-604, 608-609, 638-641, 3185, 3623-3624.

Defendant: R. 2238.

85. Both parties have from time to time expanded their line of feeds.

Plaintiff: R. 418-419.

Plfs. Ex. 50 (Bk. Ex. 9).

Defendant: R. 2238, 2292-2293.

86. The use by defendant of the trademark STALEY on foods and feeds has caused confusion and mistake and has deceived purchasers as to the source of origin of such products.

R. 310-327, 350-362, 366-367, 377-405, 408, 692-693, 748-749, 758-760, 770-771, 778-779, 786-787, 791-792, 818, 819-822, 842-844, 861-864, 870-876, 881-882, 886-889, 894-897, 908-910, 914-919, 924-927, 943-945, 950-952, 956-958, 1063-1064, 1073-1074, 1082, 1084-1086, 1088-1089, 1091-1092, 1095-1098, 1184-1186, 1193-1198, 1210-1212, 1223-1225, 1236, 1249-1253, 1263-1266, 1302-1304, 1315-1317, 1326-1328, 1332-1333, 1493-1495, 1500-1501, 1504-1505, 1823-1825, 1849, 1853-1854, 1861-1862, 1874-1875, 1881, 1883-1884, 2192-2193.

Plfs. Ex. 110, 111A, 111B, 112A, 112B, 113A-113E, 114A, 114B, 115A-115J, 116A, 116B, 117A, 117B, 119, 120A, 120B, 121A, 121B, 122, 123A, 123B, 124, 125, 126A, 126B, 126C, 127, 128A, 128B, 128C, 129A, 129B, 130A, 130B, 134A, 134B, 135A, 135B, 136A, 136B, 136C, 140A, 140B, 141A, 141B, 144A, 144B, 145, 146A-146D, 148A, 148B, 148C, 149A, 149B, 150A, 150B, 150C, 151A-151D, 152, 153A, 153B, 154A, 154B, 155A, 155B, 156, 157, 158, 159A, 159B, 159C, 160A, 160B, 160C, 161A, 161B, 162, 163A, 163B, 163C, 164A, 164B, 164C, 165A-165D, 166, 167A-167D, 168A, 168B, 169, 170, 171, 172, 173A, 173B, 174, 175A-1, 176, 177, 178A, 178B, 178C, 179A-179E, 180A, 180B, 180C, 181A-181D, 182, 183A, 183B, 184A, 184B, 185A, 185B, 186A, 186B, 187A, 187B, 188A-188D, 189, 201A, 201B, 202, 203A, 203B, 203C, 204A, 204B, 204C, 205, 206, 207, 208 (Bk. Ex. 25), 209, 210, 211A, 211B, 212A, 212B, 213A, 213B, 214 (Bk. Ex. 26), 215, 216A-216D, 217, 218A, 218B, 219A, 219B, 220, 221A, 221B, 222, 223A, 223B, 224A, 224B, 225A, 225B, 226, 227A, 227B, 228, 229, 230, 231, 232, 233A, 233B,

233C, 234, 235A, 235B, 236A, 236B, 237, 238, 239A, 239B, 239C, 240A, 240B, 241A, 241B, 242A, 242B, 242C, 243A, 243B, 243C, 244A, 244B, 245.

87. Farmers and feeders have bought defendant's feeds believing them to be plaintiff's feeds.

R. 311-312, 692-693, 748-749, 758-760, 769-771, 778-779, 786-787, 791-792, 812-814, 818-820, 842-844, 894-898, 908-910, 914-919, 925-927, 943-945, 950-952, 1063-1064, 1073-1074, 1082, 1084-1086, 1091-1092, 1095-1097, 1099-1100, 1184-1186, 1193-1195, 1223-1225, 1236, 1249-1251, 1251-1252, 1263-1266, 1315-1317, 1501, 1504-1505, 1823-1825, 1874-1875, 1881.

88. Dealers have handled defendant's feeds believing them to be plaintiff's feeds.

R. 311-312, 366-367, 370, 886-889, 1170-1171, 1243, 1354-1356, 1572-1573, 1682-1685, 1688-1691, 1832-1834, 1849-1850.

89. It is frequently assumed by the trade and public that plaintiff and defendant are either identical or that defendant is a subsidiary of plaintiff or that defendant's plant in Kansas City, Missouri, is a branch plant of plaintiff or that defendant and plaintiff are in some manner connected or affiliated.

R. 311-312, 721, 728-729, 797-798, 817-818, 861-864, 915-916, 924-925, 936-937, 956-958, 967, 1009-1015, 1100, 1198, 1264-1265, 1332-1333, 1341, 1353-1356, 1390, 1432, 1439-1441, 1486-1487, 1523-1524, 1530-1531, 1538-1539, 1547-1548, 1557-1558, 1563-1564, 1566, 1582, 1655, 1693-1694, 1697, 1716, 1802, 1830-1831, 1884, 2747, 3593-3594.

90. Feeds, whether mixed or unmixed, are products which the public naturally expects a processor of corn and soybeans to produce.

R. 742-743, 785, 800, 1423-1425, 1440-1441, 1523, 1527, 1540.

91. The use by defendant of the trademark STALEY on foods and feeds is likely to cause confusion and mistake and to deceive purchasers and potential purchasers as to the source of origin of such products.

R. 311-313, 706-708, 720-721, 729, 747-749, 756-757, 758-760, 762-763, 786-788, 797-800, 802-803, 810, 812-818, 861-864, 902-903, 932-933, 956-959, 967-970, 1009-1011, 1021, 1022, 1022-1024, 1105, 1140-1146, 1174-1176, 1198, 1340-1341, 1352-1356, 1367, 1391, 1395, 1399, 1406, 1410-1411, 1412, 1415-1417, 1422, 1424-1426, 1432, 1438-1440, 1448, 1486-1489, 1511-1512, 1523-1524, 1530-1531, 1534, 1538-1540, 1544, 1547-1548, 1558, 1564, 1566, 1582, 1584, 1587, 1600-1601, 1654, 1696-1697, 1705, 1712, 1716-1717, 1725, 1736, 1743, 1744, 1756, 1759, 1770-1771, 1802, 1831, 1847, 1854, 1882, 2298-2299, 2747, 3350, 3593-3594, 3600-3601.

92. The use by defendant of other trademarks, such as 4 BELLS and PIG MAMA, along with STALEY does not distinguish defendant's products from plaintiff's products sold under the trademark STALEY'S.

R. 1097-1098, 1109-1110, 1414-1417, 1423-1425, 1494-1495, 1548-1549, 1566.
Plfs. Ex. 406 (Bk. Ex. 42-45).

93. The use of the identical trademark STALEY by both parties on kindred products is inevitably and necessarily deceptive and confusing.

R. 1396, 1421-1422, 1464, 1492-1493, 1494-1495, 1511, 1530-1531, 1684-1685, 1729, 1790, 1792, 1797, 1861-1862, 2192-2193, 3447.

94. The natural and probable result of defendant's use of the trademark STALEY was to lead the public to purchase defendant's goods in the belief that they were the goods of plaintiff.

R. 311-312, 366-367, 369-373, 692-693, 720-721, 728-729, 748-749, 756-759, 762-763, 769-771, 778-779, 788-789, 791-792, 796-798, 800-802, 819-822, 842-845, 861-

864, 886-889, 894-897, 908-910, 914-919, 924-927, 936-937, 943-945, 950-952, 956-958, 967, 1009-1015, 1022-1024, 1063-1064, 1073-1074, 1082, 1084-1086, 1088-1089, 1091-1092, 1095-1098, 1170-1172, 1179-1180, 1184-1186, 1193-1198, 1223-1225, 1236, 1243-1244, 1249-1253, 1263-1266, 1315-1317, 1326-1328, 1332-1333, 1340-1341, 1352-1356, 1410-1411, 1439-1441, 1486-1487, 1500-1501, 1504-1505, 1523-1524, 1530-1531, 1534, 1538-1539, 1540-1541, 1544, 1548, 1558, 1564, 1566, 1572-1573, 1582, 1584, 1587-1588, 1654, 1683, 1689, 1696-1697, 1716-1717, 1742-1744, 1802, 1823-1825, 1831, 1832, 1849, 1874-1875, 1881, 1883-1884, 3593-3594, 3600-3601.

95. Such specific differences as may exist between the goods of the parties hereto are not sufficient to prevent confusion of the trade and public when STALEY and STALEY's are used as trademarks on or in connection with such goods.

R. 311-312, 692-693, 720-721, 728-729, 748, 756-757, 762-763, 769-771, 778-779, 791, 796-798, 800-802, 812-819, 819-820, 842-845, 861-864, 886-889, 894-897, 908-910, 913-919, 924-925, 926-927, 936-937, 944-945, 956-958, 967, 1009-1015, 1022-1024, 1063-1064, 1073-1074, 1082, 1085-1086, 1088-1089, 1091-1092, 1096-1098, 1179-1180, 1193-1195, 1198, 1223-1225, 1236, 1243-1244, 1249-1251, 1251-1253, 1263-1266, 1316-1317, 1326-1328, 1332-1333, 1340-1341, 1354-1356, 1395, 1399, 1410-1411, 1415-1417, 1423-1425, 1439-1441, 1448, 1486-1489, 1500-1501, 1504, 1511, 1523-1524, 1530-1531, 1534, 1538-1539, 1541, 1544, 1547-1548, 1558, 1564, 1566, 1582, 1584, 1587-1588, 1600-1601, 1654, 1696-1697, 1712, 1716-1717, 1725, 1736, 1744, 1756, 1759, 1770-1771, 1802, 1823, 1831, 1847, 1854, 1861, 1874, 1881, 1882, 1884, 2232-2233, 2298-2299, 3593-3594, 3600-3601.

96. The use by defendant of the identical trademark STALEY on its products indicates an intent to appropriate plaintiff's good will in its trademark and to use it unfairly in competition with plaintiff.

R. 144-146, 152, 294, 306-309, 349-350, 1386-1387,

1577-1588, 1639-1640, 1784-1785, 1849, 1947, 1963, 1983, 2005, 2018, 2039-2040, 2056, 2061, 2118-2119, 2133, 2151-2152, 2155-2159, 2169, 2219, 2285, 2297-2299, 2310, 2312-2313, 2380-2381, 2382-2383, 2395, 2397-2401, 2410-2411, 2572, 3690-3691.

Plfs. Ex. 18, 51 (Bk. Ex. 10), 53 (Bk. Ex. 11), 98, 98A (Bk. Ex. 24), 99A, 100, 100A, 101, 102, 103, 104, 105, 106, 107, 108, 108A, 109, 109A, 110.

Dfts. Ex. 203A (Bk. Ex. 52), 203F, 203G, 213, 219E-219I, 219P, 221B, 221G, 221M, 226B, 226C.

97. Plaintiff is the rightful owner of the name STALEY's as a trademark for food for human consumption and for livestock and poultry feeds and is entitled to the exclusive use of said trademark for said products.

See record references under Findings 10, 12, 14, 16, 17, 18, 25, 28, 30, 32, 33, 34 (App. 5, 6, 7, 8, 10, 11).

98. There is no evidence of any third-party usage of STALEY or STALEY's as a trademark, or part of a trade name, for food or feeds.

99. Defendant's infringement of plaintiff's trademark rights was intentional, progressive and wrongful.

R. 144-146, 2394-2395, 2282-2285, 2397-2401, 152, 294, 297-300, 306-309, 349-350, 1577-1588, 1784-1785, 1849, 1947, 1963, 1983, 2005, 2018, 2039-2040, 2056-2057, 2061, 2119, 2133, 2151-2152, 2155-2159, 2169, 2219, 2297-2299, 2310, 2312-2313, 2380-2381, 2382-2385, 2410-2411, 2414, 2424, 2480, 2485-2486, 2572, 3690-3691.

Plfs. Ex. 18, 51 (Bk. Ex. 10), 53 (Bk. Ex. 11), 95A-95F, 98, 98A (Bk. Ex. 24), 99A, 100, 100A, 101, 102, 103, 104, 105, 106, 107, 108, 108A, 109, 109A, 110, KCA2 (Bk. Ex. 6).

Dfts. Ex. 203A (Bk. Ex. 52), 203F, 203G, 213, 219E-219I, 219P, 221B, 221G, 221M, 226A, pp. 22. 25, 30, 35, 226B, p. 32, 226C, pp. 4, 6 (Bk. Ex. 54), 7, 10, 17, 21, 23, 37, 38, 39, 40, 41, 42, 43 (Bk. Ex. 55), 63, 72, 73, 74, 75, 76, 77, 226D, p. 15, 226E, pp. 16, 17, 22.

100. There is public interest involved in this action.

101. The public has an interest in being protected against confusion and likelihood of confusion, caused by defendant's use of STALEY as a trademark for food and feeds.

Conclusions of Law.

(R. 3674.)

1. This court has jurisdiction of the subject matter and of the parties to this action.

2. STALEY and STALEY's are valid trademarks of plaintiff under the common law.

3. Plaintiff's federal registrations of its trademark STALEY's are valid and subsisting, unrevoked and uncancelled.

4. Plaintiff has both the common law and statutory right to the exclusive use of the trademark STALEY or STALEY's on all of its products.

5. STA-LAY, STA-SWEET and STAVITE are valid trademarks of plaintiff under the common law.

6. Plaintiff's federal registration of the trademark STAVITE is valid and subsisting, uncancelled and unrevoked.

7. Plaintiff has the right to the exclusive use of STA-LAY, STA-SWEET and STAVITE as trademarks for its products.

8. Plaintiff's trademark STALEY's is not a weak trademark.

9. The trademark STALEY's has had a secondary meaning to the trade and public as identifying plaintiff and plaintiff's products as to source in commerce since 1912.

10. It does not affect plaintiff's rights under the trademark STALEY's that a large part of plaintiff's feed products have been sold without the mixing of ingredients and a large part of defendant's feed products have been sold after the mixing of ingredients.

11. Defendant's adoption of a trademark identical to plaintiff's, and defendant's continued use of the same after knowledge of its use by plaintiff, resulting in confusion and deception of purchasers as to the source of origin of such goods, is an unfair trade practice and within the proscription of the Federal Trade Commission Act.

12. That defendant has invested money in developing its business is not a valid defense to an unfair trade practice.

13. That the trademark STALEY's is derived from a family name is without controlling significance under the facts and circumstances herein.

14. Defendant, by its use of the trademark STALEY, is unfairly trading upon plaintiff's reputation and good will.

15. Defendant's continued use of the trademark STALEY after acquiring knowledge at least as early as 1934 of plaintiff's use of said trademark on feeds shows an intent to infringe plaintiff's rights in the trademark STALEY's.

16. Defendant's use of STALEY as a trademark became, and is, wrongful.

17. The use, and the manner of use, of STALEY as a trademark by defendant has been a "progressive encroachment" upon plaintiff's rights in said trademark.

18. Defendant's use, and manner of use, of STALEY as a trademark has been, and is, unlawful.

19. Plaintiff had, and does have, the lawful right to expand its line of feeds under the trademark STALEY's.

20. Plaintiff did not lose its right to make a full line of feeds because it did not at the beginning of its feed business make all kinds of feeds.

21. The public has an interest in this case which is entitled to protection. The right of the public to be protected against fraud or deception as to the source of goods is a

right which transcends the rights of the individual trademark owner and is beyond his power to waive.

22. Where actual confusion and likelihood of confusion exist, as in this case, and purchasers are deceived or mistaken as to the source of origin of the goods of the two companies using the same trademark on the same or similar goods, as in this case, the rights of the public as well as the rights of plaintiff are invaded.

23. Plaintiff is not barred from injunctive relief by reason of laches, acquiescence or estoppel.

24. Defendant has not established its affirmative defenses.

25. The equities are with plaintiff.

26. Plaintiff has no adequate remedy at law.

27. Defendant's use of STALEY as a trademark for its products constitutes an infringement of plaintiff's common law and federally registered trademark STALEY's.

28. Defendant's use of STALEY or STALEY's as a trademark constitutes unfair competition with plaintiff.

29. Plaintiff is entitled to a judgment restraining defendant, its officers, agents, servants, employees and assigns and all persons holding or acting by, through or under it from:

(a) Using the name STALEY or STALEY's or STALEY FEEDS or STALEY's FEEDS as a trademark for food for human consumption or for livestock or poultry feeds or from using a colorable imitation thereof.

(b) Emphasizing the name STALEY over the other words of defendant's corporate name.

(c) Doing any act or thing likely to confuse the public in relation to the identity of plaintiff's and defendant's products.

30. Defendant's counterclaim and the amendment and supplements thereto are without merit and should be dismissed.

31. Plaintiff is not entitled to an accounting.

32. Plaintiff is entitled to recover from defendant its taxable costs of this action.

Chas. G. Briggle,
United States District Judge.

Dated: This 18th day of March, 1955.